

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

C.O. 266 of 2019

Chandra Bhattacharyya & Ors.

-vs-

Nilkamal Bhattacharyya & Ors.

For the Petitioners	:	Mr. Pulak Ranjan Mondal
	:	Ms. Bandana Mondal
For the Opposite Parties	:	Mr. Sounak Bhattacharyya
	:	Mr. Sounak Mondal
	:	Mr. Anirban Saha Roy
	:	Mr. Abhirup Halder
Heard on	:	21.8.2023
Judgment on	:	24.08.2023

Ajoy Kumar Mukherjee, J.

1. Being aggrieved and dis-satisfied with the judgment and order dated 10th January, 2012 passed by the learned Civil Judge (Senior Division)-cum-Assistant Sessions Judge, Baruipur, South 24-Parganas in Misc. Appeal No. 4 of 2008 the present application has been assailed.

2. By the impugned order, the learned Court below has set aside the order of the Trial Court and sent back the case on remand for fresh consideration by the Trial Court.

3. Mr. Pulak Ranjan Mondal, learned Counsel appearing on behalf of the petitioners submits that the petitioners herein obtained an order of injunction in the form of status quo in the suit filed by them and defendant opposite parties herein in spite of specific knowledge, violated the order of injunction and as such the petitioner herein preferred the aforesaid Misc. Case being No. 8 of 2002 under Order XXXIX, Rule 2A of the Code of Civil Procedure. He further contended that the summons of the said Misc. Case 8 of 2002 was duly served upon the opposite parties but opposite parties did not contest the said Misc. Case and as such learned Judge was pleased to allow the Misc. Case ex parte and directed the petitioner to furnish the list of the immovable properties of the opposite parties for attachment by the next date. Being aggrieved by the said order the opposite parties / defendants preferred Misc. Appeal being No. 4 of 2008. Learned Appellate Court after hearing both the parties was pleased to pass the impugned order of remand.

4. Mr. Mondal further contended that the First Appellate Court should have held that the respondents therein intentionally did not contest the Misc. Case in spite of specific knowledge. The First Appellate Court should have held that in spite of knowledge of the order of status quo the respondent herein made construction without leaving 4 feet wide side space and had been going on with the making of such construction, regardless of the order of status quo as evident from the report of the Commissioner and as such the learned Trial Court was not

erred in passing the order in favour of petitioner. The learned First Appellate Court should have considered the facts and circumstances of the case and materials on record including report and G.D. Entry No. 1678 and also the evidence on record and should have found that the respondents herein have deliberately and willfully violated the order of status quo and as such the respondents herein have committed contempt of the order of the learned Trial Court and that he should have decided the case on merit without sending it back on remand.

5. Mr. Sounak Bhattacharyya, learned Counsel appearing on behalf of the opposite parties raised vehement objection and contended that the Court below was justified in passing the order of remand, since the Trial Court has allowed the Misc. Case without assigning any reason whatsoever. He further contended that it is settled proposition of law that in order to succeed, the plaintiff / petitioner must prove his own case and he must not succeed simply because the defendant failed to contest the case. He further contended that from the order impugned it is palpably clear that there is no appreciation of evidence nor there is any discussion as to how the Trial Court has reached the said conclusion. Accordingly, he submits that the order impugned does not call for any interference and praying for dismissal of the application.

6. I have considered the submissions made on behalf of both the parties. On perusal of the order impugned it appears that the Trial Court while passing the order in favour of the petitioner herein, simply recorded that he had gone through the evidence of PW. 1 to PW. 4 as well as the documents produced in evidence. He further opined that from the evidence of PW 3 and PW 4 it is crystal clear that

the opposite parties have deliberately violated the order of injunction and made themselves guilty for disobeying the order of injunction. Accordingly he allowed the said Misc. Case.

7. In the said order practically there is no appreciation of evidence nor he has recorded any reason as to why the Court below has come to such conclusion.

8. Since the Trial Court has not appreciated the evidence or the law in coming to the said conclusion, the High Court while exercising its supervisory jurisdiction can hardly scrutinize the said documents or evidence as an Appellate Court. The aforesaid exhibited documents as well as evidence adduced by the parties have also not been placed before this Court. Such appreciation of law and fact can only be done by the Trial Court, who is the custodian of the said documents and evidence. Furthermore, when the defendants / opposite parties herein of late decided to contest the case, I also find no reason as to why they should be made non-suited.

9. It is well settled that High Courts under Article 227 of the Constitution of India, have little scope to interfere with the orders of the courts below as a matter of routine. Since the Trial Court has arrived at a conclusion without assigning reason, which is regarded as the soul of every order, the court below has not committed any mistake, nor exceeded its jurisdiction in remanding the case for writing judgment afresh giving reasons. If the power under supervisory jurisdiction is used, where it is not proper to exercise, it will become counterproductive and such power may lose its vitality. Since there is nothing to show that the order impugned passed by court below is either illegal or irrational

or suffering from procedural impropriety, I find nothing to interfere with the order impugned.

C.O. 266 of 2019 is accordingly dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the petitioner, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)